

a SYKT. PAKAR KAYU & PERDAGANGAN SDN. BHD.

v.

MAA-SK SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR

VC GEORGE J

b [SUIT NO. C 3083 OF 1983]

13 MAY 1985

CIVIL PROCEDURE: *Goods delivered and sold - Order 14 proceedings taken out by plaintiffs - Affidavit evidence examined - Defendants' contentions under Order 14 not consistent with statement of defence.*

c The plaintiffs are claiming damages being the balance price for goods sold and delivered to the defendants. The defendants in their statement of defence, denied ordering the said timber from the plaintiffs. At the O. 14 proceedings, the plaintiffs exhibited the following:- actual orders placed by the defendants, the monthly statements of account between the parties which were sent by the plaintiffs to the defendants, debit notes for discrepancies which the defendants issued to the plaintiffs, the admission in writing by the defendants of the amount owed as at 31 January 1983. The defendants, at the O. 14 proceedings, admitted that goods were ordered and delivered but instead now complained of discrepancies in quantities delivered.

Held:

e [1] On the evidence, it was held that the complaints of the defendants were a sham and that there was no reasonable or any defence. In addition, no *bona fide* triable issues had been raised.

[2] The plaintiffs were entitled to final judgment. Interest was awarded from date of judgment to date of realisation.

[Plaintiffs' appeal allowed with costs. Defendants' appeal dismissed with costs.]

f For the plaintiffs - J. Indran; M/s. Mah-Kok & Din
For the defendants - Shakuntala Sharma; M/s. Sharma & Jaafar

JUDGMENT

VC George J:

g Paragraph 3 of the statement of claim is as follows:

3. The Plaintiff's claim against the defendant is for the sum of RM129,353.90 being the balance price for goods sold and delivered to the defendant at the defendant's request and the sum of RM32,967.45 being the accrued interest as at 30 June 1983.

Particulars

<i>h</i>	Principal sum		RM220,323.86
	Less:		
	Payment in November 1982	RM30,000	
	Payment in February 1983	RM40,000	
	Rebate by mutual agreement	<u>RM20,969.96</u>	
			<u>RM 90,969.96</u>
<i>i</i>			RM129,353.90
	Interest accrued thereon as at 30 June 1983		RM 32,967.45

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a The original claim was for RM129,353.90, interest and costs. At the O. 14 application stage credit was given for a further payment of RM10,000 and what was asked for was RM119,353.90. Encik Indran of Counsel for the plaintiffs conceded that the plaintiffs were only entitled to interest from date of judgment and not as prayed in the statement of claim.

b In the event I allowed the plaintiffs' appeal with costs and dismissed the defendants' appeal with costs. The order of the Senior Assistant Registrar was set aside and final judgment entered for the plaintiffs in the sum of RM119,353.90, interest thereon at 8% per annum from 25 January 1985 (being the date on which the O. 14 application was disposed of) until realisation and the costs of the O. 14 application.

Also found at [1986] 1 CLJ 595

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